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ABSTRACT

These guidelines are intended broadly to promote ultimate consumer satisfaction with performance of products as related to consumers' understanding of claims made for those products. Although the guidelines should be of interest to all concerned with the subject of claims documentation, they were developed particularly for advertisers in the development of individual corporate principles and procedures relating to claims documentation. Topics covered are: (1) The Importance of Advertising, (2) The Role of Government in Advertising, (3) The Responsibility of Advertisers: Thirteen Guidelines, (4) Review and Substantiation Procedures within a Company, and (5) Implementation of Guidelines. The appendix provides illustrative samples of advertising policies from two packaged food manufacturers, an advertising agency, an automobile manufacturer, a laundry and personal product manufacturer, a major television network, and an industry association. (SH)

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Guidelines on

Advertising Substantiation

Report of the Sub-Council on Advertising and Promotion of the National Business Council for Consumer Affairs

September 1972

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Executive Secretary: **Gerard C. Iannelli**
Director of Legal Programs, NBCCA
U.S. Department of Commerce

Honorable Peter G. Peterson
Secretary of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

As part of its effort to identify positive actions which can be taken by advertisers to help anticipate and resolve problems in the area of consumer affairs, the NBCCA Sub-Council on Advertising and Promotion has examined intensively the subject of substantiation of claims.

Earlier work of the Sub-Council has resulted in publication of a statement on "Violence and the Media" and a comprehensive project report on "Corporate Policies and Procedures on Advertising and Promotion". Recognition of the particular importance of claims substantiation has prompted the Sub-Council to develop suggested specific guidelines for use by advertisers in the development of individual corporate principles and procedures relating to documentation of claims.

We are pleased to transmit this report of the Sub-Council, "Guidelines on Advertising Substantiation", for your consideration. The guidelines are intended to promote ultimate consumer satisfaction with products and services as related to consumers' understanding of claims made for them.

We should like to express our appreciation for your help during the coming weeks in distributing these guidelines widely to advertisers, advertising agencies, and the public.

Sincerely,

Robert E. Brooker

Robert E. Brooker
Chairman, National Business
Council for Consumer Affairs

Robert J. Keith

Robert J. Keith
Chairman, Sub-Council on
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Donald S. Perkins

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Report on Guidelines on Advertising Substantiation

The Purpose of the Report

Much interest has been expressed in recent months concerning the importance of substantiation of certain advertising claims. Little, however, has been done to define clearly the purpose and scope of substantiation. The guidelines included in this document are intended broadly to promote ultimate consumer satisfaction with performance of products as related to consumers' understanding of claims made for those products, rather than narrowly as a means to help defend against possible future legal problems of an advertiser. The report should be of use to all interested in the subject of claims documentation and is intended to be of particular assistance to brand managers and others involved in reviewing documentation of claims about to be made.

The Importance of Advertising

The Sub-Council appreciates the indispensable role of national advertising in supporting the distribution and sales of consumer goods and services. It is essential to the operation of the Nation's economy. Without it, sellers would have to resort to much less efficient means of communicating with prospective consumers regarding the availability of goods and services, with commensurately inflated costs. From the consumer's viewpoint, advertising provides the only continuous offering of goods and services from which the individual can make the choices required to satisfy changing needs.

Consumer advertising, therefore, is important to sellers and buyers alike. It is an integral part of the supply and demand mechanism by which the national economy operates. Such advertising facilitates the optimum allocation of resources and, accordingly, is a positive competitive factor. *It is important that businessmen protect and preserve the integrity of consumer advertising.* While this statement is in-

tended to apply primarily to traditional forms of advertising and sales promotion materials, regardless of media used, the Sub-Council urges manufacturers and packagers to apply the same standards to promotional information appearing on consumer packaging materials.

The Role of Government in Advertising

The Sub-Council recognizes the important role of government in prohibiting advertising which is not truthful. The Sub-Council, however, recommends against any government restraints on the advertiser's right of expression in commercial advertising which are not reasonably necessary to prevent fraud and deception and to protect the public health.

Government control of information contained in consumer advertising which exceeds what is necessary to achieve these commonly accepted goals would diminish the effectiveness of advertising as a legitimate competitive activity and would impose prohibitive burdens and costs, particularly on smaller advertisers. Such action would seriously impair competition and, equally important, would reduce the amount of information available to consumers.

The Responsibility of Advertisers

The Sub-Council emphasizes that if advertising is to continue to serve its beneficial function in the market process, the advertiser must insure against its misuse. Advertisers must be able to substantiate the truth and accuracy of all claims with reasonable supporting information. Claims based on opinion should be clearly identified as such. As a measure of their responsibility and dedication to this objective, advertisers must individually set up and enforce the procedures and guidelines they require for this purpose. The Sub-Council believes that self-regulation in this regard is feasible and proper. In view of the large number of advertisers and ad-

vertising material involved, it could well be the most effective and practical approach.

It is particularly important that advertisers substantiate, in advance of their use, all factual claims relating to the safety, performance, effectiveness, quality, and price of products and services. The Sub-Council urges advertisers to observe the following thirteen precautions when making claims in these areas in consumer advertisements:

- 1. *All consumer advertising claims* should be worded to communicate clearly and accurately the realistic scope of the claim.
- 2. *Factual claims* of performance, product improvement, effectiveness, quality and durability, and competitive comparisons in consumer advertising should be based on reasonable test information related to conditions of normal consumer use and should apply in the preponderance of probable consumer use situations.
- 3. *Performance demonstrations* should be closely related to claimed consumer benefits. Demonstrations, surveys, and tests should be based on recommended or normal consumer use, and artificial or biased conditions must be avoided unless clearly identified. Testimonials should be based on actual and normal use.
- 4. Consumer products should be safe for their advertised use, and *factual health and safety claims* should be supported by a high degree of test information closely related to normal consumer use.
- 5. Consumer advertising should not suggest, depict, or extol *product applications which present an unreasonable safety risk* to the consumer, taking into consideration foreseeable consumer misuse of such products.

- 6. *Market performance claims*, such as sales leadership, should be based on appropriate consumer research or reliable market statistics.
- 7. Advertisers should not suggest or imply uses for which a particular product or service has not been reasonably *tested for effectiveness* nor suggest or imply results which the product or service is not reasonably capable of producing in recommended or normal consumer use.
- 8. Consumer advertising of *price and price comparisons* should clearly state information sufficient to enable the average consumer to understand the price advertised and what the price includes. Price claims which are exaggerated or incapable of reasonable verification should be avoided.
- 9. Advertisers should avoid *exaggerated statements and demonstrations* which reasonably could be misconstrued by consumers, "dangling" comparatives, and any intentional distortion of fact, as well as unsubstantiated claims of uniqueness.
- 10. Considerable care must be taken when advertising claims involve *judgment or opinion* in order to avoid statements that could reasonably confuse or deceive the public.
- 11. *Appeals to emotions* in consumer advertising should be in good taste and reasonably related to normal consumer expectations and attitudes with respect to the product involved.
- 12. Extra care must be given in formulating and documenting claims that relate to *controversial issues* of current public importance, such as environmental issues.

- 13. Special consideration must be given to eliminate confusion when communicating claims to *special audiences*, particularly children. Every effort should be made to insure that the expectations of these consumers are not unintentionally raised above the product's ability to perform. Care must also be taken in advertising to other audiences, such as the elderly, the poor, and the educationally disadvantaged, who may be especially vulnerable to certain types of claims.

Review and Substantiation Procedures Within a Company

The Sub-Council recognizes that many consumer products or service companies have formal procedures for the review and verification of advertising claims. The Sub-Council urges all consumer advertisers who have not already done so to establish clear, written advertising substantiation procedures to insure the truth and accuracy of all factual claims and their compliance with applicable federal, state, and local laws and regulations and with special substantiation procedures set up by advertising agencies and media, and industry advertising codes.

These procedures should be approved and promulgated by top management. Thereafter, they should be distributed to brand managers and to advertising, research and development, engineering, manufacturing, legal, public relations, marketing, sales, service, and other pertinent areas of the company as well as to advertising agencies involved.

These procedures should make clear the need for required reasonable substantiation information to support all specific factual claims in consumer advertising and should require the source of all supporting information (e.g., laboratory research, consumer research, or other material) to be indicated. Substantiating information in support of important factual claims should be filed with the advertising

copy or specifically identified. Approvals of factual claims should be in the form of signed statements by members of management who have the expertise which qualifies them to support the verification.

Advertisements involving claims, the accuracy of which the public reasonably can be expected to judge, should be based on consumer research as well as any other supporting information indicated by these guidelines when such consumer research is not duplicative and wasteful considering the other supporting information and the relative accuracy and effectiveness of testing methods. In conducting consumer research for the purpose of making consumer advertising claims, advertisers should exercise considerable attention to test design, projectability, sample, and reliability.

Finally, retailers and other distributors of consumer products should be entitled to rely on the factual claims of the manufacturer in preparing their own advertising, unless such distributors have actual knowledge that a specific claim cannot be substantiated. Moreover, retailers and distributors of consumer products should exercise care in the creation of their promotional activities to insure that they do not exceed the manufacturer's substantiated claims for the product.

Implementation of Guidelines

All consumer advertisers are urged to adopt these guidelines and to disseminate copies to all of their personnel responsible for preparing or reviewing consumer advertising.

In addition, the Sub-Council urges every advertiser of consumer products and services to assign responsibility to a specific official of their organization to receive, and respond to, requests for product or service information from individual consumers submitted in good faith to aid in making their personal buying decisions or to facilitate their personal use of such products or services.

Appendix

It is not practical for the Sub-Council to offer specific procedures and guidelines for all manufacturers and types of consumer products and services nor is it the Sub-Council's function to endorse particular company procedures. Illustrative samples from various companies, advertising agencies, media and industry associations, however, may be helpful to those currently operating without formal procedures. While various examples are annexed to this statement, the task of writing such procedures and guidelines, and of assuring acceptance, is the responsibility of each company. Only by such individual action will the Sub-Council's objectives be achieved.

Example A—Packaged Food Manufacturer

The advertising policy of the firm states, "Food products cannot be shown or written about in such a manner so as to exaggerate, misrepresent or in any way incorrectly show the product qualities. This applies to the depiction of the product itself, as well as the reported results of any test, experiment, or demonstration."

The advertising policy calls for the approval by 12 different departments within the company of all advertising. Among others these include the brand manager, research and development, product safety officer, consumer service, legal department, and purchasing.

The advertising policy also states, "Products which are to be photographed should be representative of those available to the consumer and should therefore be obtained in representative markets from retail shelves or trade warehouse when possible. When a new product has not yet reached the retail shelves or trade warehouse, a representative sample should be obtained from an actual production run. If a new product is not yet being produced at the plant, a laboratory

sample may be used if there will be no material difference in appearance between it and the plant-production product. If a laboratory sample or early production run product is used, the Consumer Service representative having responsibility for the product will obtain a sample from a representative retail market or trade warehouse as soon as it becomes available for comparison with pictorial representation. If any material difference exists, the Brand Manager and Consumer Service representative will immediately institute a corrective change in the representation."

Regarding the preparation of products for photography, the guide states, "Products should be prepared for photography according to package directions. Any deviation from such directions must be disclosed on the label or in the ad. Implements used should be those which are readily available to the average consumer and the method of preparation should be such that it does not require any professional expertise."

Example B—Advertising Agency Guidelines

One of the country's leading advertising agencies has drawn up its own procedure manual for food advertising. It covers acquisition of food used in advertising, preparation and depiction, use of props, copy and servings.

Regarding preparation of food, the manual states, "The food is not to be washed, strained, blotted or otherwise subjected to treatment which would not occur under normal circumstances of preparation and use by the consumer. No coloring or extraneous material is to be added to the food unless clearly and conspicuously disclosed in the ad. In photographing or filming the food, techniques may not be used which would distort the size or quantity of some or all of the ingredients of the food nor any color filters or other devices be used which may distort the appearance of the food."

Props used in food advertising—plates, bowls, cups, glasses, eating utensils and the like—are, according to the manual, ". . . to be of normal size and dimension to avoid 'giantism'—i.e., making use of undersized props to exaggerate the size or quantity of the food or certain of its elements."

The agency's manual also states, "If the copy or label for the product specifies that one package or can of food product will yield X number of servings, and a serving is shown in the ad, the number of ounces in the serving shown must be consistent with the statement. If not consistent, the number of ounces in the serving shown must be clearly and conspicuously disclosed in the ad."

Example C—Automobile Manufacturer

A corporate procedure has been instituted by a major automobile manufacturer to define the responsibilities and methods related to the review and validation of the accuracy of its advertising claims.

Specific responsibilities are assigned to the company's product planning, comptroller's, engineering and research, legal, safety and quality control, advertising and sales promotion departments.

The product planning department, the procedure states, ". . . is responsible for assuring the accuracy of all product information provided to advertising agencies and for obtaining the required supporting data and for providing additional information as requested when adequate documentation is available."

Under the procedure, advertising agencies ". . . are required to identify the source of each claim contained in an advertisement, using an identification system developed by the advertising manager. When supporting documentation is not yet available this fact will be noted."

Documents used to provide a source of information for

advertising claims include engineering publications, product descriptions, product planning letters, reference photographs, trim, paint, and plastic charts, paint and trim option charts, price lists, and other published engineering data.

The procedure calls for any claim included in advertising material which has not been previously validated and documented to be highlighted in the list submitted by the agency as requiring special attention.

Example D—Laundry and Personal Product Manufacturer

At this firm the brand manager group is charged with the ultimate responsibility for the supportability of advertising. If, in the process of technical or legal clearance, a difference of opinion arises, the brand manager is responsible for resolving it by carrying the matter to higher levels of management for review and decision.

Their policy requires that each new advertising submission be forwarded to the technicians assigned to the brand for their evaluation. Principal questions to be answered are: (1) Do existing product performance data adequately support, from a technical point of view, claims made for the product in the advertising? (2) If the evidence is not on hand, can such data be developed by the technical people?

Following technical evaluation, the advertising is submitted, together with appropriate written substantiation, to the legal department for review.

Written substantiation of the supportability of each claim is prepared by the brand group, drawing on information provided by technical people as appropriate. A standard format, "Proof of Advertising Claim", is used by all brands. These statements are cleared with the technical people who review the accuracy of supporting data from their point of view and initial the document when they are satisfied.

Where support of a claim rests on market research or

technical testing for factual foundation, the proof of claim statement includes a summary of the research-testing involved which covers the date of the testing, who conducted the test, explanation of the method employed, and explanation of the results.

When completed the document is forwarded to the legal department for approval. The completed and initialed proof of claims statements are kept on file to support all future use of the claims involved.

Example E—Television Network Standards

One of the major television networks has established general advertising standards which apply to all its advertisers. Those standards state that the network ". . . reserves the right to accept or reject at any time any product offered for advertising over its facilities and to investigate the accuracy of all statements and claims made in commercial copy." The network ". . . also reserves the right to require elimination or revision of any material contrary to the public interest or inconsistent with the company's standards of truth and accuracy. Illustrations and text in demonstrations of advertisers' products on television programs shall faithfully represent the products themselves."

Regarding price and value claims, the standards state: "Statements of prices and values must be confined to specific facts. Misleading price claims and unfair comparisons tend to challenge the integrity of all advertising and must not be used."

Example F—Industry Association

The National Association of Broadcasters, composed of radio and television station owners throughout the U.S., adopted its Television Code in 1952 and has revised it periodically since. The Code outlines standards in program and

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advertising content to which television members of the NAB adhere.

In the section dealing with general advertising the Code states: ". . . a television broadcaster should, in recognition of his responsibility to the public, refuse the facilities of his station to an advertiser where he has good reason to doubt the integrity of the advertiser, the truth of the advertising representations, or the compliance of the advertiser with the spirit and purpose of all applicable legal requirements."

The Code also states: "The role and capability of television to market sponsors' products are well recognized. In turn, this fact dictates that great care be exercised by the broadcaster to prevent the presentation of false, misleading, or deceptive advertising. While it is entirely appropriate to present a product in a favorable light and atmosphere, the presentation must not, by copy or demonstration, involve a material deception as to the characteristics, performance, or appearance of the product."

Example G—Packaged Food Manufacturer

In its "Guidelines for Product Claim Support" one of the nation's leading packaged food manufacturers states that evidence from consumer research studies used to support a claim ". . . should be timely enough to have application to the current market situation. When market conditions dictate, more current research support will be required."

The guidelines state that in all cases the claim as stated in advertising must be supported. In addition, if there is an implied claim perceived by, or likely to be perceived by, a significant proportion of potential viewers or readers, then support must also be available for the implied claim, even if that claim is not intended.

Regarding market performance claims relating to the extent of broad usage or popularity, the guidelines require the support of accepted consumer or retail research measurements, such as Nielsen ratings, for any such claims.

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National Business Council for Consumer Affairs

EXECUTIVE COMMITTEE

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